



Briefing: San Francisco Bay Plan Policies Applicable to Sand Mining

January 15, 2015

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Outline



- Permit Compliance
- CEQA Review
- Permit Schedule
- Applicable San Francisco Bay Plan Policies



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Past Permit Compliance Issues

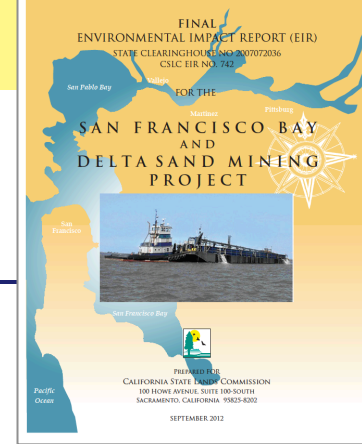
Hanson Marine Aggregates

- Mining off lease
 - Permits now require automated tracking of mining activity
- Mining excess volume
 - Quarterly and annual reports
 - More frequent review of reports and files
- Reporting
 - Improved reporting requirements
- Fraud
 - The State and Hanson settled the litigation, which included a \$42.2 million payment to the State.



California Environmental Quality Act Review

CEQA Review Process



- Lead Agency: State Lands Commission
- BCDC - Responsible Agency, provided comment
- Notice of Preparation - 2007
- Draft EIR - 2010
- Revised Draft DEIR – November 2011
- Final EIR Certified – October 2012



Final EIR



- Final EIR provides useful analysis
- Additional information, including recent research findings
- Information provided by the applicants and interested parties
- Agency findings
- BCDC review and analysis: McAteer-Petris Act, Suisun Marsh Preservation Act, San Francisco Bay Plan, and the Suisun Marsh Protection Plan



CEQA Baseline Determination

- State Lands Commission established the baseline volume based on the 5-year average at the time of the Notice of Preparation (NOP) – 2007.
- The State CEQA Guidelines link the baseline to the time of the NOP, but also allow the lead agency some discretion in its development.
- 1,426,650 cy annually



Determination of a Significant Impact in the EIR

Biological Resources

- Potential to take listed species, a net loss of habitat, impediments to migration, substantial loss of population or habitat



Mineral Resources

- Loss of availability of value to region or state, or loss of availability of locally important resource



Significant Effects Analyzed in the EIR

Hydrology and Water Quality

- Exceeds water quality objectives or toxicity rule, creation of long term changes in receiving environment, increased contaminant levels have potential to cause harm, altered topography that creates substantial erosion or sedimentation



Hazards and Hazardous Materials

- Operations inconsistent with regulations, non-conformity with contingency or hazard plans, potential for accidents, insufficient emergency response capability

Significant Effects Analyzed in the EIR

Air Quality and Green House Gases

- Conflicts with an Air Quality Plan, violates standards, results in a cumulatively considerable net increase in pollutants, exposes sensitive receptors, adverse impacts to human health, would be considered a significant impact to climate change if it were to increase GHG above baseline, where included in the States GHG inventory, or any GHGs not included in the inventory, or conflicts with plan to reduce GHGs adopted pursuant to AB 32



Significant Effects Analyzed in the EIR



Cultural Resources

- Substantial change in historical resource, unique archeological, paleontological, or geological resource, or disturbance of human remains

Land Use and Recreation

- Conflicts with habitat conservation plans, adopted recreation plans or planning efforts, incompatible adjacent land use, residual impacts on water recreation

State Lands Commission Lease Criteria

- The State Lands Commission must comply with all applicable regulatory statutes, such as CEQA, during its lease consideration process.
- As a land owner, the State Lands Commission has broad discretion to manage the lands and natural resources under its jurisdiction and authorizes leases for the occupation, use and development of these lands and resources subject to the common law Public Trust Doctrine and the terms and conditions that are in the best interest of the people of California (PRC section 6301 et seq.)



State Lands Commission Lease Criteria

These include:

1. Consistency with the common law and statutory Public Trust Doctrine.
2. Consistency with the statewide public's trust needs and values at the particular location.
3. Consistency with CEQA and contingent upon all other regulatory approvals being obtained.
4. That fair market value compensation is provided for occupying/using the state's property or resources.
5. That the State is adequately protected from liability associated with the authorized use.
6. That the lease is otherwise in the best interest of the state.



Current Permit Schedule

STATUS: Applications are currently incomplete

- Application submitted – February 2013
- BCDC Science Panel – January 2014
- Resource Agency coordination – ongoing
- Waste Discharge Requirements – anticipated January 21, 2015



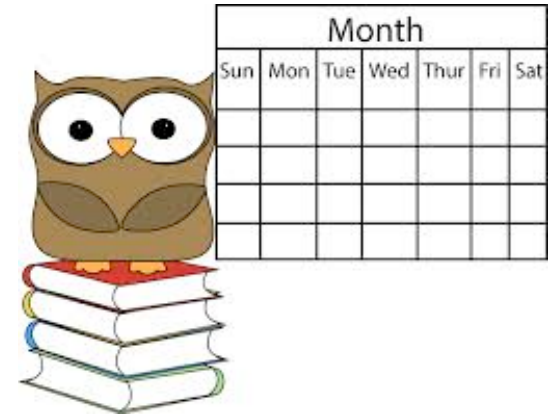
Interagency Meetings

BCDC Meetings with applicants



Anticipated Commission Meetings:

- Public Hearing: February 19, 2015
- Vote: March 19, 2015
- Six-Month Time Extensions through June 2015
 - Previously authorized volume only



San Francisco Bay Plan Applicable Policies

Applicable Bay Plan Policies

- Fish, Other Aquatic Organisms, and Wildlife
- Water Quality
- Tidal Marsh and Tidal Flats
- Subtidal Areas
- Dredging
- Recreation
- Mitigation
- Public Trust
- Navigational Safety and Oil Spill Prevention



Fish, Other Aquatic Organisms, and Wildlife

Policy One:

Strives to conserve, restore and increase Bay habitats for the benefit of wildlife.

Policy Two:

Directs the Commission to protect specific habitats that are needed to conserve, increase or prevent the extinction of any native species.

Policy Four:

Directs the Commission to consult with the Resource Agencies, and require applicants obtain appropriate “take” authorization, when a project may adversely affect listed species.



Water Quality

Policy Two:

Ensures water quality in all parts of the Bay is maintained at a level that supports beneficial uses of the Bay. It also directs the Commission to consider the policies, recommendations, decisions, advice and Water Board.



Tidal Marsh and Tidal Flats

Policy One:

Directs the Commission to conserve tidal marshes and tidal flats. ...and not authorize dredging projects that would substantially harm tidal marshes or tidal flats unless they provide substantial public benefits and there is no feasible alternative.

Policy Two:

Requires a thorough evaluation of... dredging projects to determine the effect of the project on tidal marshes and tidal flats, and minimize, and if feasible, avoid any harmful effects.

Policy Five:

Supports comprehensive Bay sediment research and monitoring to understand sediment processes necessary to sustain and restore wetlands.



Subtidal Areas



Policy One:

Requires thoroughly evaluation of projects in subtidal areas and that they be designed to minimize and, if feasible, avoid any harmful effects.

Policy Two:

States that subtidal areas that are scarce or have an abundance and diversity of wildlife should be conserved. Projects in these areas should be allowed only if: (a) there is no feasible alternative; and (b) the project provides substantial public benefits.

Policy Five:

Directs the Commission to support and encourage expansion of scientific information on the Bay's subtidal areas.

Mitigation

Policy One:

Projects should be designed to avoid adverse environmental impacts to natural resources. Whenever adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable, and then unavoidable adverse impacts should be mitigated for.

Policy Two and Three:

Mitigation projects should be sited and designed within a Baywide ecological context, as close to the impact site as practicable and take into consideration potential benefits to humans from Bay natural resources.



Mitigation

Policy Four and Five:

The amount and type of mitigation should be determined for each mitigation project based on a clearly identified rationale, and favor restoration over creation of habitat to increase likelihood of success.

Policy Six:

Mitigation should be provided prior to, or concurrently with the project components causing adverse impacts.



Mitigation

Policy Seven and Eight:

When mitigation is necessary, a mitigation program should be coordinated with all affected agencies and reviewed and approved by or on behalf of the Commission as part of the project.

Policy Nine:

If more than one mitigation program is proposed, cost should be considered in determining the program.

Policy Ten and Eleven:

The Commission may allow fee-based mitigation, use of credit or mitigation banking when other mitigation measures are infeasible.



Dredging



Policy Two:

The Commission should authorize dredging projects when they meet a number of requirements laid out in the plan, including that the project will result in the minimum dredging volume necessary for the project...

Policy Seven:

All dredging projects should be designed to not undermine the stability ... fish and wildlife habitats.

Policy Twelve:

The Commission should participate in the LTMS, ... and other initiatives conducting research on Bay sediment movement.



Recreation

Policy Three:

The Commission should encourage and allow activities consistent with the following standards: ...

- g. Beaches. Sandy beaches should be preserved, enhanced, or restored for recreational use, such as swimming, consistent with wildlife protection.



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Public Trust

Policy One:

When the Commission takes any action affecting lands subject to the public trust it should ensure that the action is consistent with the public trust needs for the area.

Navigational Safety and Oil Spill Prevention

Policy One:

Ensures that marine projects are in compliance with oil spill contingency planning requirements.



Thank You



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